

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 10

February 12, 1997, 5:27 pm
Page S-1295 Temp. Record

BALANCED BUDGET AMENDMENT/National Security Waiver

SUBJECT: **Balanced Budget Constitutional Amendment . . . S.J. Res. 1. Hatch motion to table the Dodd modified amendment No. 4.**

ACTION: MOTION TO TABLE AGREED TO, 64-36

SYNOPSIS: As reported, S. J. Res. 1, the Balanced Budget Constitutional Amendment: will require a three-fifths majority vote of both Houses of Congress to deficit spend or to increase the public debt limit; will require the President's annual proposed budget submission to be in balance; and will require a majority of the whole number of each House to approve any bill to increase revenue. Congress will be allowed to waive these requirements for any fiscal year in which a declaration of war is in effect. Congress will enforce and implement this amendment by appropriate legislation. The amendment will take effect in fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later. The States will have 7 years to ratify the amendment. For related debate, see 103rd Congress, second session, vote Nos. 47-48, 104th Congress, first session, vote Nos. 62-63 and 65-98, and 104th Congress, second session, vote No. 158.

The Dodd modified amendment would amend section 5 of the proposed constitutional amendment. It would strike the section that would allow the balanced budget requirement to be waived if the United States were in a military conflict that posed an imminent and serious threat to national security. Before such a waiver, the majority of the whole number of each House would have to pass a resolution to that effect, and that resolution would have to be enacted. In lieu of that language, the Dodd amendment, as modified, would insert language stating that the United States could waive the balanced budget requirement if it faced "an imminent and serious military threat to national security as declared by a joint resolution, which becomes law." The amendment was modified immediately before the vote. The modification was to add the final three words, and was made in response to criticism that the amendment, as introduced, would have allowed the waiver of the balanced budget amendment simply by any Member introducing a resolution that claimed the United States faced a military threat.

Debate was limited by unanimous consent.

(See other side)

YEAS (64)			NAYS (36)		NOT VOTING (0)	
Republicans (55 or 100%)	Democrats (9 or 20%)		Republicans (0 or 0%)	Democrats (36 or 80%)	Republicans (0)	Democrats (0)
Abraham	Hutchinson	Baucus	Akaka	Johnson		
Allard	Hutchison	Bryan	Biden	Kennedy		
Ashcroft	Inhofe	Dorgan	Bingaman	Kerrey		
Bennett	Jeffords	Graham	Boxer	Kerry		
Bond	Kempthorne	Hollings	Breaux	Kohl		
Brownback	Kyl	Moseley-Braun	Bumpers	Landrieu		
Burns	Lott	Reid	Byrd	Lautenberg		
Campbell	Lugar	Robb	Cleland	Leahy		
Chafee	Mack	Wyden	Conrad	Levin		
Coats	McCain		Daschle	Lieberman		
Cochran	McConnell		Dodd	Mikulski		
Collins	Murkowski		Durbin	Moynihan		
Coverdell	Nickles		Feingold	Murray		
Craig	Roberts		Feinstein	Reed		
D'Amato	Roth		Ford	Rockefeller		
DeWine	Santorum		Glenn	Sarbanes		
Domenici	Sessions		Harkin	Torricelli		
Enzi	Shelby		Inouye	Wellstone		
Faircloth	Smith, Bob					
Frist	Smith, Gordon					
Gorton	Snowe					
Gramm	Specter					
Grams	Stevens					
Grassley	Thomas					
Gregg	Thompson					
Hagel	Thurmond					
Hatch	Warner					
Helms						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Following debate, Senator Hatch moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

Proponents of the Dodd amendment have noted that the language of constitutional amendments should be chosen with great care. With all due respect, they should have followed their own advice. Under the Dodd amendment as introduced, the Balanced Budget Constitutional Amendment would become null and void immediately upon the introduction, in either House, by only one Member, of a resolution claiming that the United States faced a national security threat. Does any Senator have even the slightest scintilla of doubt that each session of Congress would open with a few such resolutions being introduced in each House? The world has never been without conflict and we highly doubt that it ever will be. Resolutions could be introduced now saying that we face a threat from China or from terrorists, or saying that our security interests are threatened by Iraq or Iran, or saying that we need to deficit spend to keep the conflict in Bosnia from spreading throughout Europe. A resolution would not even have to posit a credible threat; any tenuous or ridiculous excuse would do. Without a vote, without a hearing, and without any remotely credible reason the balanced budget requirement could be waived. Due to our criticism of this hastily drafted amendment, our colleagues have now, at the last second, proposed a modification. That modification says that the resolution would have to become law. We applaud that improvement, but we note that it would still create an enormous loophole. On the simple assertion that the world is a dangerous place, Congress could pass by majority votes, or even by voice votes, a resolution to void the balanced budget requirement. The fact that Congress can deficit spend by simple-majority or even voice votes is precisely why the country is nearly bankrupt. Passing the Dodd amendment would just result in Congress deciding the world was too dangerous a place for it to act responsibly by balancing the budget. We would have a totally unenforceable balanced budget requirement in the Constitution.

The language in the underlying constitutional amendment, on the other hand, is sound. It will allow the waiver of the balanced budget requirement for national security purposes under two circumstances. First, the requirement will not apply if a declaration of war is in effect. The United States has rarely declared war--that declaration has always been reserved for extremely grave, momentous conflicts, and it always will be. Members and the President will never lightly commit the United States to war. The second circumstance is when the United States is involved in a military conflict that involves an imminent and serious threat to national security and a joint resolution, adopted by a majority of the whole number of each House, is enacted to that effect. This language has been added because the United States has been in such conflicts previously without declaring war. To declare war, both Houses must pass a bill or resolution and the President must sign it. Such a bill or resolution is subject to being filibustered in the Senate, and is also subject to being vetoed, and if vetoed it may be enacted over the President's veto by two-third-majority votes in each House. Under this constitutional amendment the same strictures will apply to a resolution declaring that an ongoing conflict poses a serious and imminent military threat, with one added requirement: a majority of all Members in each House must go on record as believing such a threat exists. Members must go on record in order to make certain that they do not try to use such a declaration as a gimmick to avoid responsible budgeting, and at the same time to avoid responsibility for their actions by not voting. Without this added requirement, a bill to unbalance the budget could even conceivably pass by voice vote, that bill could well be for a lesser military conflict for which the United States could pay without deficit spending, and every Member could claim to their constituents that they had opposed waiving the constitutional requirement.

Just as in the previous Congress, some Senators have made the specious argument that it is unclear as to whether the Vice President could vote to break a 50-50 vote in the Senate. Clearly he could not. The requirement is that a majority of the whole number of each House must vote, and the Vice President is not a Senator. This requirement is not a simple-majority vote requirement on which the Vice President could break a tie vote--it is a supermajority vote requirement on which a tie vote is impossible. A vote of 50-1 would not be sufficient, nor would any other vote in which at least 51 Senators did not vote in the affirmative. Just as the Vice President may not vote in other constitutional supermajority vote situations, such as on votes for constitutional amendments, he may not vote in this situation.

When the United States is in minor conflicts that do not threaten national security those conflicts should be paid for within the budget; we should not pile up debt for our children fighting wars that do not pose a serious threat to our Nation's security, especially at a time when the greatest threat to our Nation's security is the size of the debt itself. Similarly, in preparing defenses, the United States should stay within its budget. If a new threat suddenly becomes apparent that the United States will likely have to meet, and if deficit spending is necessary to build its forces, we remind our colleagues that in the past, Congress has always been willing to come up with supermajority votes for emergency deficit spending, whether for the military, for disaster relief, or for economic relief. Voting to meet an emergency funding need by deficit spending is much easier, always, than voting to send Americans into combat.

The greatest threat to our Nation's national security is deficit spending. Largely due to liberals' refusal to address entitlement spending, military spending has been cut back drastically in the past few years. The military budget has been in decline since 1985 and it has been in freefall since President Clinton took office. In real terms, the defense budget has been nearly halved since 1992. If the United States were again to go to the Persian Gulf to stop Iraqi aggression, and if it were to commit the same number of troops

FEBRUARY 12, 1997

VOTE NO. 10

as it did last time, it literally would have to send its entire Armed Forces. When the troops arrived, they would find that they would have to fight with essentially the same weaponry that they had in 1992, because the Defense Department has been on a "procurement holiday" under this President.

The United States' first priority must be to defend itself. No decision for Members has ever been or ever will be more difficult than to send troops into combat. Decisions to deficit spend or to balance the budget, to spend more on defense or to spend more on other purposes, are hugely important, but they do not immediately and directly cost American lives, and the fate of the Nation does not usually rest on them. When the United States is at war or is in a military conflict that is so large that it threatens national security, balancing the budget becomes secondary to protecting the Nation, and in such circumstances we should not require a supermajority vote to deficit spend. This balanced budget amendment will not require supermajority votes under those military circumstances, but it will under all others. Unlike the Dodd amendment, it strikes the right balance. We urge our colleagues to support the underlying language by voting to table the Dodd amendment.

Those opposing the motion to table contended:

We oppose this balanced budget amendment to the Constitution, and will vote against it when we reach a final vote. However, our opposition to this amendment does not relieve us of our responsibility to improve it in the event that it passes. Every word of the Constitution must be chosen with extreme care, because how those words are interpreted can have great effect. By our analysis, the words chosen by this proposed amendment have not been chosen with enough care in the area of national security. They may make it impossible for the United States to respond in time when its very existence is threatened, and they may make Congress' judgment subject to judicial review. The Dodd amendment would correct both of these problems.

Section 5 of the proposed constitutional amendment states the following: "The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House which becomes law." Under this language, the balanced budget requirement may only be waived if there is a declaration of war or if the United States is actually fighting in a conflict that threatens national security. The danger with this language is that throughout its history this country has had to respond militarily to threats before actual conflict broke out. Numerous examples come to mind: before the Persian Gulf War started, billions of dollars were spent pre-positioning troops and equipment; before World War II, the budget was out of balance by 30 percent because Congress and the President had the foresight to launch a massive military buildup; and during the 1980s, President Reagan rebuilt America's defenses, leading, in the opinion of many observers, to the collapse of Soviet communism. This amendment would not give a national security exemption to respond to any of these types of threats.

We think that requirement is much too high. A bare majority vote should be sufficient to allow deficit spending to protect national security. Maybe mistakes in judgment would be made, and the debt would be increased when the country was not really in danger, but it is better to err on the side of caution when the safety of the country may be at stake. Under this amendment, though, even when the United States is already fighting more than a majority vote will be required to deficit spend. Half the Members plus one will have to vote in favor of waiving the constitutional requirement. Thus, in the Senate, 51 votes will be needed, whether 100, 80, or just 51 Senators vote.

This fact leads us to our second concern with this constitutional amendment's language on national security, which is that judges may get involved. The first way they may get involved is in deciding if the Vice President may break a tie, 50-50 vote in the Senate. The second way they may get involved is in deciding if there is a national security threat. The language does not say that the balanced budget requirement may be waived if there is a national security threat AS determined by Congress; it says it may be waived if there is a national security threat AND a resolution to that effect is enacted. Judges may therefore step in to decide if there is a national security threat. We do not want lengthy judicial delays when spending to protect the country is immediately needed.

The Dodd amendment would correct these problems in a straightforward manner. It would strike the second exemption and would insert that the balanced budget requirement could be waived if the United States faced an imminent and serious military threat to national security as declared by a joint resolution. Under this formulation, Congress would not have to gain a supermajority vote to waive the requirement before it was actually in a conflict, nor would it have to waive it by a majority of all Members. Further, judges would have no opportunity to second guess a waiver because, by definition, the threat would exist if the resolution said it did.

Balancing the budget is an important priority. Ensuring the survival of our country is an even greater priority. The Dodd amendment would make certain that the requirement to balance the budget would not interfere with the greater requirement to protect America. We urge its adoption.